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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,553

01/23/2004

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13768.473

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EXAMINER

DAILEY, THOMAS J

ART UNIT

PAPER NUMBER

2152

MAIL DATE

DELIVERY MODE

09/03/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/763,553	<b>Applicant(s)</b> CABRERA ET AL.	
	<b>Examiner</b> THOMAS J. DAILEY	<b>Art Unit</b> 2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. Claims 1-23 are pending.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 15, 2008 has been entered.

### ***Response to Arguments***

3. The applicant argues, with respect to claims 1, 10, and 22, that Collins (US Pub. No. 2002/0029285) fails to disclose messaging transactions and that the current claims allow for multiple instances and transactions to be running concurrently in possible different states.
4. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., multiple transactions running concurrently in possible different states) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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Claims 1, 10, and 22 simply recite one messaging transaction and one instance governing that transaction. Therefore, the examiner maintains the rejections of these limitations.

5. The applicant argues, with respect to claims 1, 10, and 22, that Collins (US Pub. No. 2002/0029285) fails to disclose state information and that the examiner's conclusion of inherency is improper.
6. These arguments have been considered but are moot in view of the new ground(s) of rejection.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
8. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins (US Pub. No. 2002/0029285) in view of Reynolds (US Pat. 5,627,964).
9. As to claim 1, Collins discloses a computing system that includes one or more processors, persistent media configured to store information that persists through

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power loss of the computing system, and system memory that is directly accessed by the one or more processors ([0035], lines 1-8), the computing system operable in both normal mode and recovery mode, a method for permitting the computing system to operate in recovery mode while ensuring reliable message processing for messages received during the recovery mode operations in which at least one instance governing a transaction is operating in a recovery mode ([0061], lines 12-16), the method comprising the following:

an act of receiving a message corresponding to a particular message transaction, wherein the message is a normal message suitable for normal mode operations with respect to the particular message transaction and an instance governing the particular message transaction is in a recovery mode rather than a normal mode ([0064], lines 1-7, "incoming protocol stream" reads on a message, and is not processed as the client agent is in a recovery mode, hence the messages in the incoming protocol stream are normal messages suitable for normal mode operations);

upon receiving the message, an act of determining corresponding to the particular message transaction that the instance governing the particular message transaction is in the recovery mode, rather than the normal mode ([0064], lines 1-7, as the operation of the client agent in recovery mode is distinct from its normal operation (i.e. in recovery mode it stores incoming messages in a queue rather than processing them as they come in), hence a determination is essential);

an act of determining that the received message is a normal message suitable for normal mode operations with respect to the particular message transaction, ([0064], lines 10-16, as the client agent checks incoming commands for a recovery message, messages that are not are considered normal and placed in the queue) wherein the received message cannot be processed until the instance governing the particular message transaction is in the normal mode, ([0064], lines 1-10);

an act of placing the received message into a persistent queue associated with the instance governing the particular transaction for later processing when the instance is in the normal mode rather than the recovery([0064], lines 1-10); and

an act of completing recovery mode operation for the instance governing the particular transaction ([0064], lines 1-10).

But, Collins may not explicitly disclose determining *from state information* corresponding to the particular message transaction that the instance governing the particular message transaction is in the recovery mode.

However, Reynolds discloses disclose determining from state information corresponding to a particular message transaction that the instance governing the particular message transaction is in the recovery mode (column 6, lines 28-

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32, "special flag" reads on state information; "fail-mode" reads on recovery mode).

Therefore it would have been obvious to combine the teachings of Collins and Reynolds because the substitution of one known element for another (i.e. Reynolds's use of a flag to determine the mode of operation versus Collins detail deficient determination of the mode of operation) would have yielded predictable results (i.e. the determination as to whether Collins's system was in normal or recovery mode) to one of ordinary skill in the art at the time of the invention.

10. As to claims 10 and 22, they are rejected by the same rationale set forth in claim 1's rejection.

11. As to claims 2 and 14, Collins and Reynolds disclose an act of loading the state information from persistent media into system memory in response to the act of receiving the message (Reynolds, column 6, lines 20-32).

12. As to claim 3 and 15, Collins and Reynolds disclose an act of saving the state information into persistent media after the act of placing the message into the persistent queue (Reynolds, column 6, lines 20-32).

13. As to claims 4 and 16, Collins and Reynolds disclose:

an act of receiving a second message corresponding to the particular message transaction (Collins, [0064], lines 10-16, incoming stream contains multiple messages);

upon receiving the second message, an act of determining from state information corresponding to the particular message transaction that the instance governing the state information is still in the recovery mode rather than the normal mode (Collins, [0064], lines 7-16);

an act of determining that the second message is a recovery message suitable for recovery mode operations and not suitable for normal mode operations (Collins, [0064], lines 10-16, “a recovery maker” indicates a particular message as a recovery message); and

an act of processing the recovery message (Collins, [0064], lines 10-22).

14. As to claim 5 and 17, Collins and Reynolds disclose an act of loading the state information from persistent media into system memory in response to the act of receiving the second message (Reynolds, column 6, lines 20-32).

15. As to claim 6 and 18, Collins and Reynolds disclose an act of saving the state information into persistent media after the act of processing the recovery message (Collins, [0064], lines 10-22).



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16. As to claim 7 and 19, Collins and Reynolds disclose an act of determining that the processing of the recovery message completes recovery of the instance governing the particular message transaction (Collins, [0064], lines 10-22).

17. As to claim 8 and 20, Collins and Reynolds disclose an act of setting the state information to reflect normal operation mode, wherein the act of saving the state information into persistent media after the act of processing the recovery message occurs after the act of setting the state information to reflect normal operation mode (Collins, [0064], lines 10-22).

18. As to claim 9 and 21, Collins and Reynolds disclose an act of processing one or more normal messages in the queue in response to the act of determining that the processing of the recovery message completes recovery of the instance governing the particular message transaction (Collins, [0064], lines 10-25)

19. As to claim 11, Collins and Reynolds disclose the one or more computer-readable media comprise physical memory media (Collins, [0036], lines 1-10).

20. As to claim 12, Collins and Reynolds disclose the physical memory media comprises persistent media (Collins, [0036], lines 1-10).

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21. As to claim 13, Collins and Reynolds disclose the physical memory media comprises system memory (Collins, [0036, lines 1-10)

22. As to claim 23, Collins and Reynolds disclose:

an act of determining that the received message is a normal message suitable for normal mode operations, (Collins, [0064], lines 10-16, as the client agent checks incoming commands for a recovery message, messages that are not are considered normal and placed in the queue) wherein the received message cannot be processed until the instance is in the normal mode, (Collins, [0064, lines 1-10);

an act of placing the received message into a persistent queue for later processing when the instance is in the normal mode rather than the recovery (Collins, [0064, lines 1-10); and

an act of completing recovery mode operation (Collins, [0064, lines 1-10).

### ***Conclusion***

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Dailey whose telephone number is 571-270-1246. The examiner can normally be reached on Monday thru Friday; 9:00am - 5:00pm.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

25. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. J. D./  
Examiner, Art Unit 2152

/Bunjob Jaroenchonwanit/  
Supervisory Patent Examiner, Art Unit 2152